



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2010

Mr. Bill Delmore
Assistant District Attorney
Ninth Judicial District
207 West Phillips, 2nd Floor
Conroe, Texas 77301

OR2010-16169

Dear Mr. Delmore:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 398053.

The District Attorney for the Ninth Judicial District (the "district attorney") received a request for the district attorney's file pertaining to a named individual. You state the district attorney has released some of the requested information with the redaction of the following: (1) Texas driver's license and license plate numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009) and (2) social security numbers pursuant to section 552.417(b) of the Government Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities

specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090- .127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we agree Appendix C consists of CHRI the district attorney must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

The submitted information also contains medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). This office has concluded that, when a file is created as the result of a hospital stay, all the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released on the patient's signed, written consent, provided that the consent specifies the (1) information to be covered by the release, (2) reasons or purposes for the release, and (3) person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked medical records in Appendix D that may be released only in accordance with the MPA. *See* Open Records Decision No. 598 (1991). However, none of the remaining information in Appendix D constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the district attorney may not withhold any of the remaining information in Appendix D under section 552.101 in conjunction with the MPA.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal

investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information submitted as Appendix B relates to a concluded criminal prosecution that did not result in a conviction or deferred adjudication. Based on your representations, we conclude the district attorney may withhold Appendix B under section 552.108(a)(2).¹

In summary, the district attorney must withhold Appendix C under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The medical records we have marked in Appendix D may be released only in accordance with the MPA. The district attorney may withhold Appendix B under section 552.108(a)(2) of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 398053

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive for Appendix B, we need not address your remaining argument against its disclosure.